

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3092 OF 2019

Reynolds Shirting Limited] ... Petitioner

Versus

Assistant Commissioner of Income-tax,]
Central Circle 6(3), Mumbai & Ors.] ... Respondents

Mr. Madhur Agrawal i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM :- K. R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATE :- 14 DECEMBER, 2021

P. C. :-

1. Petitioner received a notice dated 28/03/2019 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') that the Revenue has reasons to believe that Petitioner's income chargeable to tax for AY 2012-13 has escaped assessment within the meaning of Section 147 of the Act. Copy of the reasons is annexed to the Petition. We have considered the reasons recorded with the assistance of Mr. Madhur Agrawal, learned Counsel for Petitioner. No reply has been filed by Respondents though time was granted on 27/11/2019.

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2. We find that there is no material forming the basis for re-opening the assessment that would evidence the linkage / nexus to the conclusion that Petitioner's income chargeable to tax has escaped assessment. The Court has to examine whether the reasons to believe has rational connection with the formation of the belief. There must be a live link between the material connecting the notice of the Assessing Officer and the formation of belief regarding escapement of income. Paragraph 12 of the Judgment of this Court in the case of ***Principal Commissioner of Income-tax-5 Vs. Shodiman Investments (P) Ltd.***¹ reads as under :

“12. The re-opening of an Assessment is an exercise of extra-ordinary power on the part of the Assessing Officer, as it leads to unsettling the settled issue/assessments. Therefore, the reasons to believe have to be necessarily material (whatever reasons) which form the basis of re-opening Assessment and its reasons which would evidence the linkage/nexus to the conclusion that income chargeable to tax has escaped Assessment. This is a settled position as observed by the Supreme Court in S. Narayanappa v. CIT [1967] 63 ITR 219, that it is open to examine whether the reason to believe has rational connection with the formation of the belief. To the same effect, the Apex Court in ITO v. Lakhmani Merwal Das [1976] 103 ITR 437 had laid down that the reasons to believe must have rational connection with or relevant bearing on the formation of belief i.e. there must be alive link between material coming the notice of the Assessing Officer and the formation of belief regarding escapement of income. If the aforesaid requirement are not met, the Assessee is entitled to challenge the very act of re-opening of Assessment and assuming jurisdiction on the part of the Assessing Officer.”

¹ [2018] 93 taxmann.com 153 (Bombay)

3. The reasons as made available to Petitioner merely indicates information received from the DDIT (Investigation), about certain entity entering into suspicious / questionable transactions. The entire information received has been reproduced in the reasons. In the information so reproduced, there is no mention or even a cursory reference to Petitioner. There is no link between the information received from the DDIT and Petitioner. The information / material received is not further linked by any reason to come to the conclusion that Petitioner has indulged in any activity which could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped assessment. Perhaps, it is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer has escaped assessment. In our view, this is evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment. Moreover, in the last paragraph, the Assessing Officer alleges that substantial income (specified as above) chargeable to tax has escaped assessment for AY 2014-15 and accordingly notice under Section 148 of the Act for AY 2014-15 has been issued for the purpose of re-assessment. This shows non-application of mind not only by the Assessing Officer but also the sanctioning authority. If both these persons had read the reasons before putting their signatures, they would have found the error in the assessment year. Off course, the Assessing Officer has, by a

communication dated 23/10/2019, informed Petitioner that the last paragraph of the reasons recorded recorded had a typographical error that AY 2014-15 instead of 2012-13 has been mentioned and the reasons for re-opening was once again provided with corrections in the last paragraph. Mr. Agrawal submitted that this should mean that fresh reasons have been recorded and fresh sanction should have been obtained. We do not agree with Mr. Agrawal because there is nothing new in the reasons provided on 23/10/2019 save and except the assessment year has been corrected to reflect the correct assessment year in the last paragraph; but at the same time, our view expressed earlier that if only the sanctioning authority has read the reasons and applied his mind to the same, it would have indicated the error in the assessment year and that there is absolutely no link or nexus between the information received from DDIT and Petitioner. Therefore, in our view, the notice dated 28/03/2019 issued under Section 148 and the order dated 24/10/2019 disposing the objections have to be set aside and the same are hereby set aside.

4. Petition disposed accordingly.

(AMIT B. BORKAR, J.)

(K. R. SHRIRAM, J.)